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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA

4 v.

17 CR 417 (AKH)

5 ALI KOURANI,

Jury Trial

6 Defendant.

7 -----x

8 New York, N.Y.

9 May 14, 2019

11:05 a.m.

10 Before:

11 HON. ALVIN K. HELLERSTEIN,

12 District Judge

13 And A Jury

14
15 APPEARANCES

16 GEOFFREY S. BERMAN

17 United States Attorney for the
18 Southern District of New York

AMANDA L. HOULE

EMIL J. BOVE III

19 Assistant United States Attorneys

20 ALEXEI SCHACHT

21 Attorney for Defendant

22 ALSO PRESENT: KERI SHANNON, Special Agent FBI

23 MARGARET SHIELDS, Paralegal, US Attorney's Office

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(In open court; jury not present)

THE COURT: At around 9:45 last night, we emailed to both sides a proposed jury charge and a proposed verdict form. Mr. Ross will mark the proposed jury charge as what I think is my next court exhibit, which will be 4, and the proposed verdict form as 5.

There's a slight change in the top. We'll give you the copy that will replace the one we sent to you last night.

I'd like to draw to your attention my procedures with the jury charge. Although I read much of this, I will also be extemporaneous. If someone on the jury asks for amplification, I may reread, or explain, or depart in some fashion from the literal words of the jury charge. So I don't give out the charge to the jurors. It's just read orally. If they have a question, they'll come back and ask for guidance.

Now, I do this because I've found, in many years of practice, that when you give a long document to a person, that person's reading is unreliable. I've found the most intelligent people read things wrong, and unless you are able, I think, to relate to people and see what they understand and what they don't, that there's things that can be misunderstood.

Secondly, some people on the jury will be better readers than others and will then take on the role of explaining things to the other jurors if they have written charges. That's not good. The jurors should be equal. If

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1 they need guidance, they should come out and ask for it. So I
2 can involve both sides and myself in giving guidance.

3 Third, sometimes when juries deliberate for a long
4 time and become deadlocked in one thing or another, emotions
5 get very high, and it's a very good outlet as they feel to go
6 out and ask the judge to give them a better explanation of
7 something or other. So for these reasons, I don't give out a
8 written charge.

9 This is the only copy you're going to get. There's a
10 specific reason for giving you a separate page of things we
11 change, and I reserve the right, until I deliver the charge, to
12 make changes according to how the trial progresses.

13 This is how we'll proceed: I'll ask the government
14 first what is the first page that you have on which they wish
15 to make a comment, and if the defendant has a page before that,
16 we'll listen to whoever has the comment on the first page.

17 So, Ms. Houle, you don't have to stand, you can sit.

18 MS. HOULE: Page 11.

19 THE COURT: What's the first page on which you have a
20 comment?

21 MS. HOULE: Page 11, your Honor.

22 THE COURT: Do you have anything before that,
23 Mr. Schacht?

24 MR. SCHACHT: I'm just checking. I'm sorry, I didn't
25 organize it exactly that way.

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1 No, I do not have anything before that.

2 THE COURT: Okay. Just one minute.

3 Page 11.

4 MS. HOULE: Four lines up from the bottom of the page,
5 your Honor, there's a remaining reference to aiding and
6 abetting a violation of the IEEPA charge. I just believe that
7 that reference to an aided and abetted --

8 THE COURT: Yes, we didn't.

9 MS. HOULE: -- can be struck.

10 THE COURT: That slipped by, right.

11 So it will say "violated and attempted to violate an
12 executive order," et cetera.

13 MS. HOULE: "Violated or attempted to violate."

14 THE COURT: Yes, "or attempted to violate."

15 What's the next page?

16 MS. HOULE: The next page is page 24.

17 THE COURT: Anything before that, Mr. Schacht?

18 MR. SCHACHT: Yes, your Honor.

19 THE COURT: What page?

20 MR. SCHACHT: On page 19, I would ask that your --

21 THE COURT: One minute.

22 MR. SCHACHT: Sure.

23 THE COURT: Yes.

24 MR. SCHACHT: On page 19, I ask that you not give a
25 conscious avoidance charge. I just think, given the facts in

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1 the case, it's unnecessary and confusing. There's no aspects
2 here of conscious avoidance. The defendant allegedly confessed
3 to the crime, not with fully and affirmatively, not with any --

4 THE COURT: Ms. Houle?

5 MS. HOULE: I think, your Honor, that the conscious
6 avoidance instruction is appropriate. The defense has
7 suggested, in his opening statement and through
8 cross-examination, that Hezbollah was a legitimate
9 organization, not a terrorist organization. So, to the extent
10 that the defense is going to suggest that the defendant didn't
11 understand that Hezbollah was a terrorist organization, while
12 being embedded in this conduct --

13 THE COURT: I believe that Ms. Houle is correct. So I
14 will overrule the objection.

15 If it's appropriate, things have changed, you can ask
16 me, before I deliver the charge, to consider the point again.

17 MR. SCHACHT: Thank you.

18 THE COURT: Next point, Ms. Houle?

19 MS. HOULE: Page 24.

20 THE COURT: Yes.

21 MS. HOULE: It's the second paragraph, and it's the
22 second line of that paragraph, "made an agreement or came to an
23 understanding to violate a particular law." We would request
24 that "a particular" be struck and replaced with just "the law."

25 THE COURT: You're correct. Have you folks come up

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1 with a better indictment to read? We have it? Okay. Thank
2 you.

3 Next?

4 MS. HOULE: Page 26.

5 THE COURT: Yes.

6 MS. HOULE: In our proposed instruction, your Honor,
7 we had proposed that there be a reference to the fact that a
8 conspiracy -- that the defendant is presumed to be a part of a
9 conspiracy until he affirmatively withdraws or the venture is
10 terminated, and your Honor had removed that portion from the
11 charge. We think it's appropriate here to include that because
12 the evidence in this case will show that there were periods of
13 time where the defendant was in the United States, trained and
14 ready to attack, but was not committing any additional conduct,
15 and I imagine that the defense will focus on that in their
16 arguments. So the jury needs to understand that until the
17 defendant affirmatively withdrew or the conspiracy was
18 otherwise terminated, he was still a member.

19 MR. SCHACHT: Judge, I --

20 THE COURT: Where is it that you want me to say that?

21 MS. HOULE: At the end, your Honor.

22 MR. SCHACHT: Judge, I would object --

23 THE COURT: One minute.

24 Before the paragraph "However"?

25 MS. HOULE: No, your Honor. After the paragraph

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1 "However."

2 THE COURT: What's your point, Mr. Schacht?

3 MR. SCHACHT: My point, Judge, is that my client is
4 charged in the indictment from being a member of a conspiracy
5 between 2002 and 2015, and so I just don't see it as an issue.
6 If he withdrew from the conspiracy in 2013, or 2012, or 2009,
7 he is still guilty. It doesn't really matter.

8 MS. HOULE: We agree, your Honor, but this is an
9 accurate statement of the law, and it's applicable to the
10 evidence here. So we think it's appropriate.

11 THE COURT: One minute.

12 I can insert something like this: "Once someone
13 knowingly and intentionally joins a conspiracy, he remains a
14 conspirator until either the conspiracy ends or that person
15 leaves."

16 MS. HOULE: That's fine. Thank you, your Honor.

17 MR. SCHACHT: I object to that, but...

18 THE COURT: And I will insert it at the end of the
19 middle full paragraph on page 26.

20 Next?

21 MS. HOULE: Page 38, your Honor.

22 THE COURT: Yes.

23 MS. HOULE: In the second paragraph, there are
24 references to overt acts being alleged in the indictment, but
25 we are no longer providing the jury with the specific overt

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1 acts alleged in the indictment, so we believe that those
2 references should be struck.

3 MR. SCHACHT: I agree, your Honor.

4 MS. HOULE: So what I would propose, your Honor, is
5 that --

6 THE COURT: There should be a period after "overt
7 contacts" and "alleged in the indictment" should be deleted?

8 MS. HOULE: I think, your Honor, what would do it is
9 if the second line read: "In order for the government to
10 satisfy its burden of proof with respect to the overt act
11 requirement, it is not necessary for the government to prove,"
12 then delete the rest of that sentence, and the beginning of the
13 following sentence, so we would pick up at, "To prove that the
14 defendant himself committed any overt act, it is sufficient for
15 the government" --

16 THE COURT: I'll accept that.

17 MS. HOULE: And then the final sentence in that
18 paragraph, it would just end at "in furtherance of the
19 conspiracy."

20 THE COURT: Okay.

21 Next?

22 MS. HOULE: 41. Assuming that Mr. Schacht doesn't
23 have anything before that?

24 MR. SCHACHT: I do not.

25 MS. HOULE: Okay.

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1 This is in the paragraph that begins "First," and I'm
2 looking at the second line. What we would propose, your Honor,
3 is for this to say: "That criterion is satisfied, as a matter
4 of law, if you find the defendant is guilty of one of the
5 crimes charged in Counts One, Two, Three, or four."

6 And, your Honor --

7 THE COURT: One minute.

8 MS. HOULE: Sorry.

9 THE COURT: Okay. It should be three or four?

10 MS. HOULE: Right. I apologize, your Honor --

11 THE COURT: So here's the line: "First, if the
12 defendant committed a crime of violence that can be charged in
13 federal court, that criterion is satisfied, as a matter of law,
14 if the defendant is found guilty of one of the crimes charged
15 in Counts One, Two, Three, or Four."

16 MS. HOULE: Thank you, your Honor.

17 MR. SCHACHT: I agree, your Honor. I was going to
18 make that comment as well.

19 THE COURT: Good.

20 Next?

21 MS. HOULE: The next page that I have is page 66.

22 MR. SCHACHT: I don't have anything before that.

23 THE COURT: Okay.

24 MS. HOULE: The last line of this page, your Honor,
25 when you define what it means for something to be proven by a

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1 preponderance of the evidence, there is a reference -- it
2 relates back to the theory of venue, that some act happened in
3 the Southern District of New York, but there are two theories
4 of venue here. There is also the 3238 that's described at the
5 beginning. So what we would propose is striking that second
6 line in the last paragraph and, instead, just inserting "to
7 prove something by a preponderance of the evidence means to
8 prove that it is more likely true than not."

9 THE COURT: Here's the way I think the last paragraph
10 should read: "I should note that on this issue, and this issue
11 alone, the government may prove venue if it shows by a
12 preponderance of the evidence that it is more likely than not
13 that any act in furtherance of the crimes charged occurred in
14 the Southern District of New York. The beyond a reasonable
15 doubt standard is not required for venue. It is required for
16 every other issue."

17 MR. SCHACHT: That's fine with me, your Honor.

18 MS. HOULE: Your Honor, sorry, the issue that I'm
19 raising is that there are two ways that we could prove venue
20 with respect to Counts One through Seven, and that is either as
21 your Honor just described or by showing that the location where
22 the defendant was first arrested was in the Southern District
23 of New York.

24 THE COURT: There are a number of changes I would do
25 here. The first two paragraphs, I'll leave as is.

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1 Starting with the "With respect" paragraph, "With
2 respect to all the counts, including, but not limited to, Count
3 Eight," I'm going to strike "with respect to all of the counts,
4 including, but not limited to, Count Eight." The paragraph
5 will start as follows: "Venue is also appropriate, and it is
6 required for Count Eight that the defendant caused an act in
7 furtherance of the crime charged to occur within the Southern
8 District of New York." I skip the next sentence, delete it.
9 "The government need not prove that the crime itself was
10 committed in this district or that the defendant himself was
11 present here. It is sufficient to satisfy this element if any
12 act in furtherance of the crime occurred within this district.
13 I should note that on this issue of venue, and this issue
14 alone, the government may prove venue if it shows by a
15 preponderance of the evidence that it is more likely than not.
16 The beyond-a-reasonable-doubt standard is not required for
17 venue. It is required for every other issue."

18 I think that captures what we're saying.

19 MS. HOULE: Thank you, your Honor.

20 THE COURT: You want me to read it again?

21 MS. HOULE: Yes. Thank you.

22 THE COURT: Starting with the third paragraph: "Venue
23 is also appropriate, and it is required for Count Eight, that
24 the defendant caused an act in furtherance of the charged
25 crime -- in furtherance of a crime charged to occur within the

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1 Southern District of New York. The government need not prove
2 that the crime itself was committed in this district or that
3 the defendant himself was present here. It's sufficient to
4 satisfy this element if any act in furtherance of the crime
5 occurred in this district. I should note that on this issue of
6 venue, and this issue alone, the government may prove venue if
7 it shows by a preponderance of the evidence that it is more
8 likely than not that venue existed. The
9 beyond-a-reasonable-doubt standard is not required for venue.
10 It is required for every other issue."

11 MS. HOULE: Thank you, your Honor.

12 THE COURT: Next?

13 MS. HOULE: Page 68.

14 THE COURT: Yes.

15 MS. HOULE: After the government submitted its
16 requested charge, the parties entered into a stipulation as to
17 the accuracy of the transcripts, and so we did not call
18 Mr. Ehab Ali, and so we would propose, your Honor, that in that
19 second paragraph, the first line remain, everything after that
20 line in that paragraph be deleted and replaced with "The
21 parties have agreed that the translations are accurate."

22 THE COURT: Okay.

23 MS. HOULE: And for that final paragraph to remain as
24 is.

25 THE COURT: I don't know that we need the final

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1 paragraph. I say that with respect to all the exhibits. I
2 don't have an objection to it being there, but it's redundant.

3 MS. HOULE: That's fine, your Honor.

4 THE COURT: I can take it out, Mr. Schacht?

5 MR. SCHACHT: Yes, that's fine, your Honor.

6 THE COURT: Okay. Next?

7 MS. HOULE: Page 73.

8 THE COURT: Yes.

9 MS. HOULE: In the second full paragraph, the second
10 line has a reference to a cooperating witness. We would just
11 ask to strike that reference since there's no cooperating
12 witness here, and that may be confusing for the jury.

13 THE COURT: Done.

14 MS. HOULE: Page 74.

15 THE COURT: Yes.

16 MS. HOULE: The last sentence of the first paragraph
17 is a reference to recorded conversations. We would just move
18 to strike that, as there are no recorded conversations in
19 evidence.

20 THE COURT: Done.

21 MS. HOULE: The next page is 77.

22 THE COURT: Okay.

23 MS. HOULE: Here, your Honor, the stipulations between
24 the parties, there is one stipulation as to what a witness
25 would say if called to testify, but there are several

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1 stipulations that certain facts are true. So what we would
2 propose is that the second and third lines of this charge be
3 struck and replaced with: "A stipulation of fact is an
4 agreement between the parties that a certain fact is true or
5 that a witness, if called, would have given certain testimony."

6 THE COURT: Okay.

7 MS. HOULE: And then for the last line to remain.

8 THE COURT: What about the next sentence, "You must
9 accept as true"?

10 MS. HOULE: That's fine, your Honor, we can retain
11 that as well, "You must accept as true the fact stipulated and
12 that the witness -- or that the witness would have given the
13 testimony."

14 THE COURT: Done.

15 MS. HOULE: We don't have any additional changes, your
16 Honor.

17 THE COURT: Mr. Schacht?

18 MR. SCHACHT: Your Honor, page 81, I would ask that
19 you not give this uncalled witness equally available charge. I
20 don't think it's factually accurate, and for that reason alone,
21 I think you should not give it. There are certain witnesses --

22 THE COURT: Are you intending to argue this point?

23 MR. SCHACHT: I'm not going to argue that there are
24 witnesses that the government should have called that they
25 didn't call. I am going to argue that they don't have

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1 compelling evidence and compelling witnesses, but I'm not going
2 to say they're out there in the world, and they failed to call
3 them.

4 MS. HOULE: Your Honor, I think that the defense has
5 already opened the door to this instruction. There has been
6 cross-examination of several of the FBI agents about people who
7 they interviewed and whether those people were witnesses in
8 this case. That cross alone demands this instruction, your
9 Honor.

10 MR. SCHACHT: I disagree, your Honor. The reason why
11 is because, if the FBI interviewed people -- well, first of
12 all, you have to make the assumption I know who those people
13 are. I don't necessarily know. And then the second assumption
14 is, if they said something that would be helpful to my client,
15 it's not true that I could even necessarily call them. I'm not
16 allowed to call a person who might say, I don't know if Ali
17 Kourani is in Hezbollah or Ali Kourani is not in Hezbollah,
18 because you wouldn't allow that testimony because if the person
19 doesn't really have any way of knowing -- because I think the
20 reality of what happened is, certain people were interviewed,
21 they weren't good witnesses for the government, and so the
22 government didn't call them. Yet, witnesses, I think, without
23 my prompting, mentioned that there were people interviewed.
24 One witness said -- I think Agent Costello said that he had
25 interviewed eight people. He was creating the implication, I

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1 think, after interviewing those eight people, he conducted some
2 further investigation as a result of interviewing those eight
3 people. And I just want to be able to say the government has
4 not brought any cooperating witnesses, or any eyewitnesses, or
5 any witnesses who can say that they've seen or heard my client
6 do anything illegal.

7 MS. HOULE: Your Honor, the defense does know who all
8 of those witnesses were who were interviewed --

9 THE COURT: Excuse me. Why don't I just take out the
10 middle sentence and keep the rest?

11 MS. HOULE: I'm sorry, your Honor, but we don't think
12 that that's sufficient. The point is that he had an equal
13 opportunity or lack of opportunity to call these witnesses.

14 THE COURT: I'm not sure. I don't know.

15 MS. HOULE: I'm sorry, your Honor, but I would also
16 note that it's not limited to the cross-examination of Special
17 Agent Costello. This came up, as well, in the
18 cross-examination of Special Agent Ganci, and there, the
19 defense went so far as to elicit hearsay about what one of
20 those witnesses would say about the defendant's membership in
21 Hezbollah.

22 THE COURT: I don't know if the defendant had an
23 ability to get information from these witnesses.

24 MS. HOULE: They're his family members, your Honor.

25 THE COURT: Not all these people were talking about

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1 family members.

2 MS. HOULE: Most of them are, especially the ones that
3 the special agents were cross-examined about. And we turned
4 over all the 302s from those interviews. Those people are in
5 United States, they're in New York, for the most part. He
6 absolutely had an opportunity to call those people.

7 MR. SCHACHT: Judge, I can't call those people because
8 they don't have any relevant testimony. The government would
9 have objected, and you would have rightfully sustained the
10 objection. I can't call a witness to say, I've never seen the
11 defendant commit a crime.

12 MS. HOULE: If it wasn't relevant, then why did he
13 cross-examine all of the FBI agents about what those people
14 would have said, including over our objection with regard to
15 the defendant's brother, Moustapha? It's page 65 of the
16 transcript.

17 MR. SCHACHT: Judge, the reason I asked FBI agents
18 about who they'd spoken to is because I wanted to point out --
19 and I'm going to point out in summation -- that the FBI has
20 conducted a very thorough, complete investigation, and, as a
21 result of that complete and thorough investigation, they've
22 been unable to bring a single witness to court to implicate --

23 THE COURT: I don't think that's a proper argument.

24 MR. SCHACHT: It's not proper for me to say the FBI
25 has conducted a good investigation?

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1 THE COURT: What's that got to do with anything?

2 MR. SCHACHT: It's got to do with a lot. I'm making
3 the point that they've been unable to bring evidence to court,
4 despite the fact that they've done a marvelous investigation.

5 THE COURT: What evidence are you talking about?

6 MR. SCHACHT: I'm talking about the fact that they
7 don't have a recording of my client doing anything illegal,
8 they don't have an email from my client doing anything illegal,
9 they don't have a witness observing or overhearing my client
10 doing anything illegal. They've introduced tons of emails, and
11 tons of Google searches, and all kinds of electronic proof, and
12 none of those things are themselves illegal. Obviously, the
13 government's free to argue that they corroborated --

14 THE COURT: Here's my ruling: "There are several
15 persons whose names you've heard during the course of the
16 trial, but who did not appear at the trial to testify. You
17 should not draw any inference or reach any conclusions as to
18 what other persons would have testified to had they been
19 called. The question you have to decide is whether the
20 evidence in the trial proves beyond a reasonable doubt the
21 crimes charged against Ali Kourani."

22 MR. SCHACHT: That's fine with me, your Honor.

23 MS. HOULE: I don't think, your Honor, that addresses
24 an argument that has already been made to the jury through
25 cross-examination that these particular witnesses were

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1 interviewed and that they have not been called here to testify,
2 including the defendant's brother, which is page 65 of the
3 transcript.

4 THE COURT: They may not be subject to subpoena.

5 MR. SCHACHT: I'm not sure which brother they're
6 talking about.

7 THE COURT: Moustapha.

8 MR. SCHACHT: Moustapha is not in the United States.

9 THE COURT: He wouldn't be subject to subpoena.

10 MS. HOULE: It's his brother. He remains in contact
11 with his brother, your Honor. And this isn't the only person
12 who came up during cross-examination. I note, again, that the
13 defense cross-examined Special Agent Costello specifically
14 about whether those people were going to be witnesses in this
15 case, which suggests to the jury that the FBI had an obligation
16 or the only opportunity to call them.

17 THE COURT: If you had objected, I would have stricken
18 the question.

19 MS. HOULE: Well, we renew our objection, your Honor,
20 then, to the testimony at page 65.

21 THE COURT: It's too late.

22 MS. HOULE: Then I think, then, your Honor, it's not
23 too late to strike that, but also to address this argument that
24 has been presented through cross-examination of several
25 witnesses, the best remedy would be to give this instruction.

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1 MR. SCHACHT: Judge, as to Moustapha, as far as I'm
2 aware, there is a warrant for his arrest, I believe. He's not
3 in the United States. Subpoenaing him in another country, I
4 wish I had the power to give people visas. He's not a U.S.
5 citizen. I can't parole him into the United States. I don't
6 think I could call him.

7 MS. HOULE: The defense --

8 THE COURT: There's ways you can get his testimony if
9 you wanted to. Here's what it's going to be: The second
10 sentence that I deleted will have in its place "Each party had
11 the right to call witnesses. You should not draw any
12 inferences or reach any conclusions as to what other persons
13 would have testified to had they been called. The question you
14 have to decide is whether the evidence in the trial proves
15 beyond a reasonable doubt the crimes charged against the
16 defendant, Ali Kourani." We're still going with that.

17 MS. HOULE: Thank you, your Honor.

18 MR. SCHACHT: You have my objection, your Honor. I
19 object to that charge.

20 THE COURT: You like the charge?

21 MR. SCHACHT: No, you changed the language.

22 THE COURT: I added: "Each party had the right to
23 call witnesses."

24 MR. SCHACHT: Yes. I think that somewhat shifts the
25 burden to me when I have no obligation to call any witnesses.

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1 THE COURT: Here's my suggestion: "There are several
2 persons whose names you have heard during the course of the
3 trial who did not appear at trial to testify. The government
4 is not required to call each and every witness in interviews.
5 You should not draw any inferences as to what any absent person
6 would have testified to had they been called. The question you
7 have to decide is whether the evidence in the trial proves
8 beyond a reasonable doubt the crimes charged against the
9 defendant, Ali Kourani."

10 MR. SCHACHT: I object to that, your Honor. I
11 think --

12 THE COURT: I've taken out the question --

13 MR. SCHACHT: I think the jury should be permitted to
14 draw inferences about what noncalled witnesses may say.

15 THE COURT: No. Only if there is some particular
16 basis for suggesting that they're being suppressed. We're
17 going with this one, what I just read. Should I read it again?

18 MR. SCHACHT: No. Thank you, your Honor.

19 MS. HOULE: Your Honor, again, for the Court to
20 instruct the jury that the defendant had an opportunity to call
21 witnesses is not a burden shift. That's an instruction that's
22 regularly given in this court. If you wanted to remedy or
23 address the defense's concern, you could include a line about
24 how the defendant has no burden, but that doesn't mean that he
25 didn't have the opportunity to call witnesses.

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1 THE COURT: I understand. We're going with what I
2 read out.

3 MR. SCHACHT: I only have one more comment about the
4 proposed jury charge, your Honor.

5 THE COURT: If Mr. Schacht opens the door to you on
6 this issue, there are ways that you can rebut it, Ms. Houle.
7 Go ahead.

8 MS. HOULE: Yes, your Honor. I'm sorry, your Honor,
9 but we believe that he's already opened the door on this issue.

10 THE COURT: Mr. Schacht?

11 MR. SCHACHT: Yes, your Honor.

12 THE COURT: What's your next point?

13 MR. SCHACHT: My next point is page 84. This ties
14 into my pretrial request to charge, and so I'll just basically
15 renew that application, just for the record, for possible
16 preservation for appeal purposes, but I don't believe that the
17 jury should be instructed that the statements obtained from my
18 client by the government were lawfully obtained. I think that
19 they should also be charged that they could find on their own,
20 the jury could, that they were involuntarily made, my client's
21 statements, but that is an issue for which the jury should be
22 allowed to make their own determination. Just for the record,
23 I'll just recite a couple of the things that I cited earlier.
24 Obviously, this was already fully briefed, but I cited the case
25 of Crane v. Kentucky, at 476 U.S. 683, and both sides briefed

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1 this in writing, but I want to renew that application.

2 THE COURT: Denied.

3 MR. SCHACHT: And then, your Honor, I have one final
4 request, which is not included. It's something that I'd ask
5 for you to include in the jury charge, which is that, I think,
6 given the particular facts of this case, I would ask that you
7 make it clear to the jury that it is not a crime to like or
8 even be a supporter of Hezbollah, that the crime is providing
9 material support. The reason why I ask for that instruction --
10 and it could simply be one line -- is that I think a reasonable
11 jury could conclude --

12 THE COURT: Where do you want me to say it?

13 MR. SCHACHT: I want you to say it when discussing the
14 indictment, that --

15 THE COURT: Give me the page.

16 MR. SCHACHT: -- when you're discussing -- I'll give
17 you the page. In page either 13 or 14, just because I think a
18 reasonable view of the evidence could be that my client likes
19 Hezbollah or believes in the mission of Hezbollah, and so, in a
20 colloquial sense, is a supporter of Hezbollah, but that that's
21 not illegal in the United States, but providing material
22 support, obviously, is illegal, just so he's not convicted
23 because he looked at some YouTube videos.

24 MS. HOULE: Your Honor, the instruction does not --

25 THE COURT: One minute.

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1 If it goes anywhere, it will go somewhere on page 17.

2 I don't think these need any further embellishment.

3 Your request is declined.

4 MR. SCHACHT: All right, your Honor. I would ask,
5 then, that you include the full statutory language, so that
6 it's clear -- it's even in the indictment -- that the provision
7 of educational or medical supplies to Hezbollah is not a crime.
8 That's specifically included, so, then, the jury will
9 understand that it's possible to support a foreign terrorist
10 organization in certain ways and have it not be criminal. I
11 think that that's actually in the indictment.

12 MS. HOULE: Your Honor, there is a line on page 15.
13 In the second full paragraph, it says: "The term 'material
14 support or resources' does not include medicine or religious
15 materials."

16 MR. SCHACHT: I did not see that. I apologize.

17 THE COURT: That's covered.

18 Next point?

19 MR. SCHACHT: Your Honor, I have no further points
20 about the jury charge. I have just motions to dismiss.

21 THE COURT: Does the government have anything further?

22 MS. HOULE: No. Thank you, your Honor.

23 Your Honor, I did have one question: Is it your
24 Honor's practice to send the exhibits to the jury room?

25 THE COURT: It is my practice not to send the exhibits

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1 to the jury room. It's my practice to have the exhibits
2 collected, and if the jury wants it, they can have it. I will
3 try to ask them to define, and ask them in particular, and
4 limit it that way, but it's not my practice to send in all the
5 exhibits.

6 MS. HOULE: Perhaps, your Honor, then, on page 96 of
7 the charge, where you note that the jurors may request
8 particular testimony, you could also note that they can request
9 a particular exhibit if they provide the exhibit number.

10 MR. SCHACHT: That sounds okay to me, also, but how
11 are they going to provide the exhibit number if they're not
12 given a list of the exhibits?

13 THE COURT: They've been taking them down.

14 MR. SCHACHT: Okay.

15 THE COURT: Here's the opening lines: "Have the
16 foreperson send me a note dated with the time, describing the
17 particular item of a particular witness' testimony you wish to
18 hear or the exhibits you may wish to see. Please understand
19 that it may take some time to recover the evidence you request.
20 You should continue to deliberate in the meantime. Also, if
21 you do send me any notes," et cetera.

22 MS. HOULE: Thank you, your Honor.

23 THE COURT: Anything else?

24 MS. HOULE: No. Thank you.

25 THE COURT: Anything else?

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1 MR. SCHACHT: Nothing. Thank you.

2 THE COURT: Okay. So except as either side objected,
3 is the charge satisfactory to the government?

4 MS. HOULE: Yes, your Honor.

5 THE COURT: To the defendant?

6 MR. SCHACHT: Yes, other than as I objected. Thank
7 you.

8 THE COURT: That's what I said.

9 Okay. See you tomorrow at 10:00 o'clock.

10 MR. SCHACHT: Judge, could I just briefly make my
11 motions to dismiss?

12 THE COURT: Oh, I'm sorry, Mr. Schacht. Yes. Hold on
13 a minute. Thank you for reminding me.

14 We haven't gone over the verdict form, before you get
15 on to the motions, which is Court Exhibit 5. Are there any
16 problems with the verdict form, Ms. Houle?

17 MS. HOULE: No. Thank you, your Honor.

18 THE COURT: Mr. Schacht?

19 MR. SCHACHT: No problems. Thank you, Judge.

20 THE COURT: Okay.

21 I need two minutes.

22 (Pause)

23 (Continued on next page)

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1 THE COURT: OK. Mr. Schacht, motions?

2 MR. SCHACHT: Your Honor, I'll simultaneously make a
3 motion at the close of the government's case and the close of
4 the defense case --

5 THE COURT: Yes.

6 MR. SCHACHT: -- to direct a verdict in my client's
7 favor. In particular, I would ask that your Honor dismiss
8 Counts Three, Four and Five, which are the counts dealing with
9 military training and machine guns and explosive devices.

10 I think in particular those three counts, there was a
11 total lack of corroboration for the statements made by my
12 client. And I know you denied my jury charge earlier on, the
13 need for requirement of a corroboration of a confession, but I
14 would ask that you consider at this time dismissing those
15 counts because the evidence did not corroborate what he said on
16 those counts. And when you made your earlier ruling you had
17 not yet heard the evidence at the trial.

18 Thank you.

19 THE COURT: So Counts Three, Four and Five is what you
20 think the government hasn't proved, right?

21 MR. SCHACHT: I am moving to dismiss all eight counts
22 but I think in particular --

23 THE COURT: Well, let's focus on Three, Four and Five.

24 MR. SCHACHT: Yes.

25 THE COURT: It charges that the defendant sometime in

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Charge Conference

1 or about 2011 in Lebanon and elsewhere knowingly received
2 military type training from and on behalf of Hezbollah. That's
3 a key section. So, the evidence is that when he was 16 --
4 that's as of 2000 -- he went to boot camp and then he went
5 twice more. One of them was in 2011. And I think the evidence
6 shows, if I remember correctly, that he had advanced training
7 in the use of various kinds of weapons and explosives.

8 Mr. Bove, do you want to handle this?

9 MR. BOVE: Yes, your Honor.

10 Thank you.

11 THE COURT: I think it's better if you stand.

12 MR. BOVE: Yes, your Honor.

13 So, the evidence on Counts Three, Four and Five comes
14 from a couple of sources. Two agents, special agents Shannon
15 and Costello testified at trial about the military type
16 training that is at issue in Counts Three, Four and Five. And
17 they described it as your Honor just did, statements by the
18 defendant that he attended an Islamic Jihad Organization
19 training in Lebanon, specifically, a place called Birkat Jabrur
20 in approximately 2011.

21 Firstly, Rule 29, as your Honor knows, the government
22 gets all the inferences available from the evidence. So, the
23 one agent's testimony is enough to get passed Rule 29 but there
24 is corroboration. In those interviews at Seton Hall the
25 defendant actually circled or he had his attorney identify the

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1 specific weapons that he was trained on. So, it's not just,
2 the evidence is not just what the agent said.

3 THE COURT: And there's a picture in particular of him
4 brandishing a machine gun under the photographs of Ayatollah
5 Khomeini and --

6 MR. BOVE: That photograph, your Honor, is from a
7 Facebook record and it is not a photograph of the defendant
8 just so we're clear. And so, we're not relying on that for
9 purposes of this was argument. What we are relying on though
10 is that it's Government Exhibit 807. It's a packet of photos
11 of weapons that the agents showed to the defendant at Seton
12 Hall. And he said, I'm concerned about initialing them myself
13 but Mr. Denbeaux can put a mark on them. These are the ones
14 that are used. So he identified an Glock, an MP5, an AK-47, a
15 PKM, that belt-fed machine gun and a rocket propelled grenade
16 launcher. So, that's a physical document, Government Exhibit
17 807, that corroborates what he said in the interview.

18 In addition, there are travel records in evidence that
19 show that the defendant went to Lebanon in June of 2011 just
20 before the training started. He left in August right after.
21 So, we're entitled at this phase to all the inferences in our
22 favor. So, the agents' testimony is enough but there is some
23 corroboration here and I just described it.

24 THE COURT: Thank you, Mr. Bove.

25 I deny the motion with regard to Three, Four and Five

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1 for the reasons discussed by Mr. Bove.

2 What about the other counts?

3 MR. SCHACHT: Your Honor, my argument is really the
4 same as to the other counts. I think that there is a lack of
5 corroboration. And I don't want to belabor the point too much
6 but the types of corroboration that Mr. Bove is talking about
7 are all from the defendant. So, my defendant's, my client's
8 statements are not corroborated. Looking at the pictures and
9 saying that's a gun, that's all from him.

10 And so, that's my argument, your Honor. It is simply
11 not corroborated in any way other than from himself and I know
12 about the travel records. I know he's gone back and forth to
13 Lebanon a number of times. We have that in evidence. I don't
14 think that corroborates the fact that he's been in Lebanon.
15 That doesn't corroborate the fact that he had military training
16 or did anything illegal.

17 THE COURT: Mr. Bove.

18 MR. BOVE: It's really an incredible perspective,
19 judge, that's being offered.

20 THE COURT: Don't use epithets. Just answer.

21 MR. BOVE: The defendant confessed to this, judge. He
22 admitted to doing it to each and every element of each and
23 every count in the indictment.

24 THE COURT: Is there any evidence, aside from his
25 words?

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1 MR. BOVE: Yes, your Honor. The different sources of
2 evidence are on his laptop, his e-mail account, the Facebook
3 records, the physical evidence seized from his apartment, a set
4 of notes where he wrote down an acronym for the IJO himself,
5 wrote down some of the training and the tasks that he carried
6 out.

7 So, the corroboration issue, we believe it's about
8 reliability. Is the defendant's confession reliable? It's
9 facially an issue that can be raised at this procedural posture
10 under Rule 29? But there is sufficient corroboration. Even
11 just the circumstances of the meetings. The defendant asked
12 for these meetings. There's sufficient corroboration to find
13 the defendant's statements are reliable. They were
14 appropriately deemed admissible by your Honor and there's other
15 evidence in the record that backs this up.

16 THE COURT: I deny the motion for the reasons
17 discussed by Mr. Bove.

18 Anything else, Mr. Schacht?

19 MR. SCHACHT: No. Thank you, your Honor.

20 THE COURT: Mr. Bove?

21 MR. BOVE: No, your Honor. Thank you.

22 THE COURT: So, tomorrow morning at ten o'clock
23 Mr. Bove will open. We'll have the first summation. He said
24 that he will keep it within two hours. Mr. Schacht will have
25 the second summation and Mr. Bove will have a short reply, and

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1 it'll be time for me to instruct the jury also. They'll
2 deliberate on Thursday and whatever else. We're going to work
3 this Friday unless the jury has resolved the case.

4 MR. SCHACHT: Thank you, your Honor.

5 THE COURT: OK.

6 (Adjourned to Wednesday, May 15, 2019 at ten a.m.)
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